



McGee Appears in Court to Testify in Martin Case

Postoffice Inspector Says He Has Changed His Opinion and No Longer Believes Myron A. Smith Wrote the Black-Hand Letters—Judgment Influenced by Seeing the Martin Letters and Confering With Kytka, the Handwriting Expert—Talk of Recalling Kytka—Trial May Be Very Long.

Assistant United States District Attorney W. M. McGee appeared in court at the opening hour and produced the lost documents, the little yellow slip and the Smith letter to his son, apologizing to the court and the attorneys for not having discovered them in his papers before. Mr. McGee stated that he did not know he had them in his possession until this morning when, at the request of the officers, he searched his office and found them.

The mooted question as to what has become of the yellow slip of paper and a letter addressed by Myron A. Smith to his son, which had troubled the court and the attorneys for a number of days, was settled in the district court in the case of the state against J. H. Martin this morning when a telephone message was received from former Assistant United States District Attorney M. McGee that he had found the papers inside of the grand jury minute book in his portfolio at his office in Salt Lake. Mr. McGee stated that he would personally bring the documents into court. Awaiting his arrival, the court took a recess until 1 p. m.

It appears that Mr. McGee had inadvertently taken the jury minutes and the two papers in question at the conclusion of the grand jury investigations regarding the Smith case and placed them in his portfolio when they should have been placed in the hands of the postoffice inspectors or the clerk of the federal court. Even though the assistant United States attorney had learned that the papers were missing, it did not occur to him that the documents began to be issued in no uncertain terms and Sheriff DeVine was making strenuous efforts to locate Postoffice Inspector L. A. McGee. The discovery of the missing papers was announced while Attorney Christensen was questioning Inspector McGee as to what had been done with the documents.

When placed on the witness stand this morning, Mr. McGee stated that he was the principal instigator of the Smith prosecution as a postoffice inspector, but that Inspector Ralph Smith had been associated in the case prior to Smith's arrest. The papers used in evidence had been in his hands, the witness said, during the time of the preliminary hearing, and that he had turned them over to the United States district attorney at the time of his investigation. At the conclusion of the investigation, Mr. McGee said the attorney returned to him a package of papers that had been used in the case and he had no idea but that all the handwriting of Smith were in the package. He kept the package in his desk at the Ogden federal building and it was turned over to District Attorney Davis at a subsequent time. He saw all the papers while the grand jury was in session but could not say whether the letter and the yellow slip were in the package when it was given to him by United States Attorney W. W. Ray.

The storm of the morning had a tendency to lessen the attendance at the trial, so far as the ladies were concerned, but the men had the court room filled at the opening hour and there were many standing in the aisle. It was expected that A. P. Bigelow, who was on the witness stand all day yesterday and a part of the day before, would be on the witness stand again this morning, but, in the face of the fact that Postoffice Inspector McGee was on hand, Attorney Christensen called him to the witness stand to ascertain what had become of the lost documents, stating to the court that he would continue the re-direct examination of Mr. Bigelow at a subsequent time. The attorney stated that he preferred to have the missing documents before him before proceeding further and that, inasmuch as they had been found, and would likely be in court for an afternoon session, he proposed a recess. Attorney Leatherwood stated that he was ready to proceed without the long-sought-for documents, but that he would not oppose a recess.

The situation is such at this time, that it is uncertain as to when the case will be submitted to the jury. All efforts are now directed toward the Myron A. Smith handwritings in comparison with the blackhand letters and the examination may reach a point where it will be necessary for the state to call the expert on handwriting, Theodore Kytka, of San Francisco, to rebut the testimony of other experts. It was rumored last evening that Kytka had been wired to return to Ogden immediately and prepare to make a thorough examination of the Smith writings. Should the rebuttal lead into such detail, all of next week, and perhaps more time, will be taken up in the further hearing of the case.

Afternoon Session.
When the trial was resumed this afternoon, the court room was crowded to its capacity and many people were standing in the outside corridor. More ladies being present than at the morning session. The interest of the afternoon centered in the testimony of Postoffice Inspector L. A. McGee who testified last November before United States Commissioner

exhibits before you now are the same as they were when you fixed your opinion last fall. There is no change in them, is there?"
"I think they are the same," said Mr. McGee.

"Then you did have to get something from the outside to change your opinion, did you not?" said the lawyer.

"Yes, it was the additional information that changed my opinion," the witness declared.

YOUNG BOY SENT TO PENITENTIARY

Walla Walla, Wash., April 10.—Roy Welsh, not yet 16 years old, was received at the state penitentiary last night to begin his life term sentence for the murder of A. H. Warden, janitor of a Tacoma school.

It is said efforts are being made to have the boy paroled. The sentencing judge had no alternative under the law as the verdict was first degree murder, which carries with it a life sentence.

FIGHT CONTINUES NEAR TAMPICO

Grave Fears of Wholesale Destruction of Oil Properties—Gunboats Warned.

Two Women Hanged

Sixty Taken on Board Des Moines—German Tanker Takes on Refugees.

Washington, April 10.—Continued fighting at Tampico, with great damage to the valuable oil property there, was reported to the state department and navy department today in dispatches from the warships on the Mexican coast. An official statement at the state department described the situation as to the oil properties this way:

"Several oil tanks have been struck, one is on fire and oil is running into the river. A number of refugees are on the warships."
The fighting at Tampico was described as heavy, with the rebels in possession of Dona Cecilia and Arbelgrande.

Rear Admiral Fletcher reported that Rear Admiral Mayo had delivered another letter to General Zaragoza about the shots fired into the Pierce oil plant from federal gunboats. Grave fears are felt here that there may be wholesale destruction of the properties.

Assurance was received that all American women and children have been gathered into places of safety.

Latest Reports to Navy.
Latest reports to the navy department were summarized in this statement:

At 3 p. m., Thursday, Admiral Mayo reported from Tampico to Admiral Fletcher at Vera Cruz that there had been but desultory firing since daybreak. Two women have been reported hanged from a tree in the city. There was also fighting in trenches near Altamira.

Admiral Mayo has delivered another letter to General Zaragoza relating to damage by gunboats to the Pierce oil plant. An oil tank at Arbelgrande was on fire at 8:30.

"Sixty women and children have been taken on board the Des Moines and all American women and children have been brought up from points on the river below the city, except at La Brea. Those who were there have gone aboard the German tanker Osage. Admiral Mayo emphasizes that refugees desire refuge, not removal."

Secretary Daniels said this morning that he had not been informed of the issuance by Admiral Mayo of any ultimatum to the federal commander at Tampico to cease firing from the gunboat into the city.

Monterey is said to be quiet.

CAPTAIN MEETS TERRIBLE DEATH

Newark, N. J., April 10.—Captain John Hansen, master of a stone barge, was knocked into Newark bay yesterday and drawn into a government sand sucking dredge half a mile away. His dismembered body was carried through a fourteen-inch pipe two thousand feet long out into the Newark meadows.

The barge, May Madison, was being towed from Newark to New York by a tug. In passing through the draw of a railroad bridge the barge butted into a stone pier and threw Captain Hansen overboard.

An hour afterward Captain Hansen had fallen from the barge, the four men at the further end of the pipe saw parts of a man's body shot out of the pipe with the flood of sand and water.

The actions formed a complete man's body. In a pocket papers were found identifying the body as that of Captain Hansen.

SESSIONS DENIES INJUNCTION PLEA

Claims Federals Did Not Come Into Court With "Clean Hands."

Clause Invalid

Killifer Scored as Unreliable—Court of Equity Does Not Protect Unfair Practices.

Grand Rapids, Mich., April 10.—Judge Clarence W. Sessions, in the United States district court, today denied the application of the Chicago Federal league club for an injunction enjoining Catcher William Killifer, Jr., from playing with the Philadelphia National league club.

The judge denied the application on the ground that the Chicago Federal league club did not come into court with clean hands. The decision also holds the reserve clause is not valid.

The decision holds that the contract of January 8, 1914, by which Killifer agreed to play with the Chicago Federal league club, and the contract of January 20, which he made on jumping back to the Philadelphia National league club, are "in form valid and binding on the parties thereto."

Killifer is Scored.
Killifer is scored for making the contracts, the decision reads.

"This record shows that the defendant Killifer is a baseball player of unique, exceptional and extraordinary skill and experience. Unfortunately the record also shows that he is a person on whose pledged word little or no reliance can be placed or who for gain to himself, neither scruples nor hesitates to disregard and violate his express engagements and agreements."

After conceding the validity of the 1914 contracts, the decision says:

Questions to Decide.
"The questions here presented and requiring consideration are these:
"First, are the provisions of the 1913 contract between the defendants relative to the reservation of the player for the succeeding season, valid and enforceable?
"Second, are the plaintiffs by their own conduct, barred from seeking relief in a court of equity?"

"The leading authorities, with possibly one exception, are agreed that the executory contracts of this nature can neither be enforced in equity nor form the basis of an action at law to recover damages for their breach. The reasons for the decisions are that such contracts are lacking in the necessary qualities of definiteness, certainty and mutuality."

1913 Contracts Lacking.
"The 1913 contract between the defendants, relative to the reservation of the defendant Killifer, for the season of 1914, is lacking in all of these essential elements. It is wholly uncertain and indefinite with respect to salary and also with respect to terms and conditions of the proposed employment. It is nothing more than a contract to enter into a contract in the future, if the parties can then agree to contract. Although it is founded on sufficient consideration, it lacks mutuality because the Philadelphia club may terminate it at any time on ten days' notice, while the other party has no such option and is bound during the entire contract period. A contract exists, but it is constantly in jeopardy, and is unenforceable either by the courts or by the parties themselves because the courts are helpless either to enforce its performance or to award damages for its breach."

"Clean Hands" Cardinal Principle.
"The principle embodied in the maxim, 'He who comes into equity must come with clean hands,' is a cardinal one lying at the foundation of equity jurisprudence. The principle thus broadly enunciated is particularly appropriate and applicable to cases like the present one where relief will not be granted as a matter of strict right, but must result from the exercise of a sound judicial discretion. Measuring and testing their conduct by this rule, are the plaintiffs in court with clean hands? Knowing that the defendant Killifer was under a moral if not a legal obligation to furnish his services to the Pennsylvania club for the season of 1914, they sent for him and offering him a longer term of employment and much larger compensation induced him to repudiate his obligation to his employer. In so doing a willful wrong was done to the Pennsylvania club, which was none the less grievous and harmful because the injured party could not obtain legal redress in and through the courts of the land. Can it be doubted that if the plaintiffs had carried out his agreements with the Philadelphia club in honesty and good faith?"

Both Open to Censure.
"Killifer expected to derive a benefit and a profit from his contract and both knew that such contract if performed would work a serious injury to the Philadelphia club. The conduct of both is not only open to censure and condemnation, but is tainted with unfairness and injustice, if not with actionable fraud. To drive a shrewd bargain is one thing and to resort to unfair and unjust practices and methods in order to obtain an advantage over a business rival or competitors, is another. Courts of equity may protect and enforce the former, but will not sanction nor lend their aid to the latter. While it is true that the plaintiffs and Mr. Killifer have entered into a legal and binding contract for the breach of which the one may be compelled to respond in damages to the other, it is also true

that, because both have acted wrongfully and in bad faith, a court of equity will neither adjust their differences nor balance their equities.

Injunction is Denied.
"The motion for an injunction must be denied; not because the executory part of the 1913 contract between the defendants was of superior or any legal force and effect; not because the contract between plaintiffs and defendant Killifer is not in itself such a one as the courts will enforce; not because there are any equities in Killifer's favor which excuse or exempt him from the performance of his engagements; and not because the merits of the controversy are with the Philadelphia club, but solely because the actions and conduct of the plaintiffs in procuring the contract, on which their right to relief is and must be founded, do not square with one of the vital and fundamental principles of equity which touches to the quick the dignity of a court of conscience and controls its decision regardless of all other considerations."

Attorney Stuart E. Knapp, local counsel for the Chicago Federal league club, after receiving the decision of Judge Sessions, said that the Chicago Federal club would now probably bring suit for damages against Killifer.

WOMAN EXPLORER SENDS REPORT

Makes Thorough Study of Peoples From Siberia to Sumatra Islands.

Traces American

Believes Ancient Settlers Came by Sea at Very Remote Period.

Washington, April 10.—After a thorough study of the peoples along the fringe of Asia from Siberia to Sumatra in her effort to trace the original American, Mrs. Harriet Adams, one of America's foremost women explorers, in a communication to the National Geographic society today expresses the opinion that the ancient "Amerie" peoples came by sea, possibly in broken stages, from Asia. Mrs. Adams has just returned to this country. In her communication she says:

"This earlier immigration, however, was at a very remote period, for our prehistoric monuments point to an indigenous culture. A branch of an old world race, these 'early Americans' evolved to their highest civilization on new world soil."

Mrs. Adams is confident that a closer study of the Indo-Chinese branch of the yellow race, the Malay, Chinese and Tibetan, as compared to our historic civilization, will shed new light on the problem of tracing the original American.

Although scientists are said to agree that America was peopled by way of the northwest, Mrs. Adams says that all Americans came this way. In the Philippines, Mrs. Adams saw Iuguanos warriors who resembled Aymara chiefs of the Andean highlands, in spite of the difference in climate.

"This is not strange when we class the Iuguanos as Malays of the Indo-Chinese branch of the yellow race and believe that ancient America was peopled from Asia," declares Mrs. Adams. "Not only among certain Malay mountain tribes, but also in western China was I constantly reminded of things Amerie," but never among a low grade of civilization, only when among people of ancient lineage. In olden days, great war canoes were paddled by many oarsmen from one south sea island to another. It seems likely that in this fashion men set sail from the Malay peninsula, with their wives and children, food, household goods and domestic animals aboard, and, aided by wind and tide, reached the promised land, some palm-fringed isle in the tropic sea."

Mrs. Adams has records of many small boats that apparently were blown across the Pacific, one of them a Japanese fishing boat which landed its unwilling immigrants alive and well on California soil two years ago.

SUSPECTS TO BE DEPORTED

Senora Committee Makes Out List of One Hundred Huerta Sympathizers.

Douglas, Ariz., April 10.—A special to the Dispatch from Naco last night states that the Senora "expatriation committee," headed by General Ygnacio Pesqueira, arrived at Cananea yesterday and made out a list of one hundred or more suspected Huerta sympathizers to be deported. The name of one American, J. M. Gibbs, a commission merchant, now said to be in Los Angeles, appears on the list. Gibbs is said to be in Los Angeles, and is believed his "deportation" will take the form of a banishment from future entry into Sonora.

All the rest are said to be Mexicans. Reports say that large numbers of Mexicans in the towns south of here are preparing to anticipate the committee by leaving the country immediately, on the theory that they will be able to return quietly and without molestation later, which would be impossible, once they were officially "deported."

MANDAMUS PROCEEDINGS IN NEW HAVEN CASE ARE ORDERED

Interstate Commerce Commission Will Take Action Immediately to Compel Production of Books and Papers to Disclose Financial Dealings Between Railroad and Billard Company—Witnesses Flatly Refuse to Answer Questions Regarding Dealings Involving Millions.

RIGHT OF COMMISSION IS DENIED

Chief Counsel Folk to Open Action at New Haven—Testimony of Charles S. Mellen Delayed to Await Outcome of Legal Action—Both Congress and Commission Defied by Defense—Treasurer of Railroad Company Only Man Willing to Testify—He Gave Evasive Evidence.

Washington, D. C., April 10.—Mandamus proceedings to compel the production of books and papers to disclose financial dealings between the New Haven railroad and the Billard company will be started immediately by the interstate commerce commission.

Chief Counsel Folk announced that he would bring the proceedings, probably at New Haven. His decision came at the end of a morning of examination of witnesses who refused to answer questions intended to develop evidence of dealings involving millions of dollars. On the advice of their attorneys, they denied the right of the interstate commerce commission to inquire into the financial affairs between the company and the railroad.

When the hearing adjourned, there was a probability that the testimony of Charles S. Mellen, former president of the New Haven system, might be delayed to await the outcome of the mandamus proceedings.

Washington, April 10.—Further inquiry into the financial affairs of the New Haven railroad was begun by the interstate commerce commission today after several weeks of investigation of the books of the company. The inquiry, under the direction of Commissioner McChord, is being made in compliance with a senate resolution directing the commission to develop all facts regarding the New Haven's banking connections; the purchase of its subsidiary properties, the money paid for them and the emoluments or commissions paid for negotiating the various transactions.

Mr. McChord announced that the principal subject to be considered at present was the relation of the Billard company to the financial operation of the New Haven. Walker D. Hines, counsel for the present management, said at the opening that it was the policy of Chairman Elliott and the present management to cooperate in every way with the commission and furnish all information.

Witness Refuses to Testify.
Harry V. Whipple, president of the Merchants' National bank of New Haven, Conn., the first witness, refused to testify as to his business relations with the Billard company. He said he was not now a stockholder in that company but had been up to last fall.

"To whom did you sell your stock in the Billard company?" he was asked.

"I must decline to answer that question because I consider it as an invasion of my personal rights," replied Whipple.

Judge Stoddard, counsel for the New Haven, explained Mr. Whipple's declination to reply.

Jurisdiction Challenged.
"We challenge the rights and the jurisdiction of the commission," said he, "to inquire into any act of the Billard company. Our contention is that such an inquiry would be beyond the scope of the commission's authority. Acting on that conclusion, we have decided to decline to answer questions relating to such matters."

"Were there any relations between the Billard company and the New Haven during your incumbency as treasurer of the Billard company?" Mr. Whipple was asked.

Witness Again Declines.
The witness again declined to answer by advice of counsel.

"Suppose," suggested Chief Counsel Folk of the commission, "that it can be shown that the Billard company owes the New Haven railroad many millions of dollars, do you think that it would be desirable to conceal this fact, in view of the desire of the senate for the information?"
"I think," interrupted Judge Stoddard, "that the senate resolution has gone far beyond the powers either of this commission or of congress. Neither the commission nor congress has any power to investigate the relations, if any, of the Billard company and the New Haven railroad."

Declines in Every Instance.
A series of questions was put to Whipple, intended to develop evidence of financial relations between the Billard company and the New Haven, or the Billard company and the New England Navigation company. He declined in every instance to answer. He refused to say whether there had been a transaction between the Billard company and the New England Navigation company involving \$21,000,000; whether the New Haven, through its subsidiary, the New England Navigation company, did not advance to John L. Billard a million dollars on his four promissory notes; or whether Billard was indebted to the New England Navigation company for \$2,000,000.

Counsel for the commission said:

Mr. Whipple had been directed by subpoena to bring books, documents and contracts of the Billard company. "Are you prepared," he inquired, "to produce those books and documents?"
"I am not," Whipple responded, and declined to say whether his refusal was or was not because the books were too bulky.

Bank President Also Refuses.
To Samuel Hemingway, president of the Second National Bank of New Haven, a similar line of questions was put. He also declined to answer. His counsel, Homer S. Cummings of New Haven, said he had concluded that "responses to such inquiries by the witness would be inappropriate, as they were quite beyond the powers of the commission."

"Suppose it could be shown," suggested Mr. Folk, "that the Billard company was owned and controlled by the New Haven road through dummy directors and officials? Would that have nothing to do with an inquiry into the New Haven's financial transactions?"

"I don't regard this," said Mr. Cummings, "as a proper tribunal to conduct this inquiry. Congress has no power to investigate the Billard company."

"Even though," interjected Mr. Folk, "the Billard company is a holding company of an interstate railroad?"
"I am not on the witness stand," responded Mr. Cummings.

Witnesses Refusal Recorded.
By direction of Commissioner McChord the record of the proceedings to show that the witnesses refused to answer essential questions in the face of a ruling by the commission that the question be answered and despite the order witnesses persisted in their refusal.

A. S. May, treasurer of the New Haven, testified that the road did not hold securities of the New England Navigation company, but did own all the stock.

"What obligations of John L. Billard, or of the Billard company were held by the New Haven or the New England Navigation company?"

"Only such," replied Mr. May, "as were necessary to the conduct of the affairs of the New Haven."

"Did Mr. Billard give his note to the New England Navigation company for \$2,742,500?"

"I think so."

"What transaction did that note represent?"

"It is impossible," responded the witness, "for me to explain all the details, but I think the transaction was in connection with the acquisition of Boston and Maine stock."

Mr. May said he knew nothing about a million dollars said to have been turned over by the New England Navigation company to Billard.

FRIENDS OF FOUR GUNMEN HOPEFUL

New York, N. Y., April 10.—An affidavit purporting to establish an alibi for "Dago Frank" Crofitch, a note from Frank Moss, former assistant district attorney, attacking the credibility of two witnesses at the trial of Charles Becker and the gunmen; and an alleged discrepancy in the decision of the court of appeals which reversed Becker's conviction were the points about which counsel for the gunmen, doomed to die on Monday for the murder of Herman Rosenthal, centered their fight today.

The affidavit, that of "Pinkie" Reo, employed in a Harlem dance hall, who swears that he saw "Dago Frank" far from the scene of the murder about the time it was committed, was rushed to Governor Glynn by special messenger.

The note written by Frank Moss concerning the two witnesses, Luban and Margolis, was placed in the hands of C. G. F. Wahle, the gunmen's chief counsel, today. "Mr. Moss's note," said Wahle, "shows that he did not believe Luban was truthful. Yet he placed him on the stand as a witness. We shall get those notes before the governor as soon as possible. If we again fail to move the governor, then we will appeal to some justice of the supreme court."

Fighting at San Pedro.
Juarez, Mex., April 10.—An official report from General Villa states that the reinforced rebels again attacked San Pedro today and they were fighting in the streets.